



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of August 26, 2008
Approved September 30, 2008

Members present: Chairman Doug Andrew, Members Jack Baker, John (Jack) Downing and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew called the meeting to order at 7:40 p.m. then called the roll.

MINUTES

Mr. Baker made the motion to accept the minutes of the July 22, 2008 meeting as written. Motion seconded by Mr. Downing with unanimous favorable vote.

Mr. Andrew appointed Mrs. Bolduc as an alternate to the Board, taking the place of absent Member Scott Boisvert.

Case # 08-004
Frank C. Bettencourt, Jr.
Under Power of Attorney for
Susan Boyd, Executrix of the
Estate of Frank C. Bettencourt, Sr.
Exeter River Camping Area
MAP 2 LOT 029

Present: Applicant Frank C. Bettencourt Jr. under Power of Attorney for Susan Boyd, Executrix of the Estate of Frank C. Bettencourt, Sr., abutters Tanya & Ken Brown and Francine & Gary Driscoll, Realtor Pat Mulcahey.

Mr. Andrew opened this Public Hearing at 7:43 p.m. and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 7:30 pm on Tuesday August 26, 2008 at the Fremont Town Hall, downstairs Land Use meeting room, for the Estate of Frank Bettencourt, Sr. as requested by Frank Bettencourt, Jr., under Power of Attorney, for 13 Clough Crossing, Map 2 Lot 029, Fremont, NH.

ZBA Meeting Minutes 08-26-08

The applicant is seeking a Use Variance from the terms of Article III Section 1, D-2 as set forth in the Town of Fremont Zoning Ordinance to allow a one (1) year (twelve (12) months) extension of time to resume the operations of the Exeter River Camping Area; a non-conforming use abandoned in excess of eighteen (18) months.

You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.

Mr. Andrew stated that there is not a full five Member Board present and related to the applicant that he has the option of waiting for the presence of a full Board for any decisions. Mr. Bettencourt opted to move forward with the four members present.

Mr. Andrew explained the purpose of the Board and the procedure for a Variance including the five conditions which must be met in order for a Variance to be granted. He then read Article III Section 1, D-2 of the Fremont Zoning Regulations.

It was noted that this hearing was noticed on August 11, 2008 at the Fremont Post Office and Fremont Town Hall and in the August 15, 2008 edition of the Rockingham News. The applicant and all abutters were notified via certified mail on August 15, 2008 and all returns have been received except for that of the Estate of Frank Bettencourt, Sr. The application package included the proper check amount, a current list of abutters, letter of intent, an August 11, 2008 Code Enforcement letter of denial, notarized document for Power of Attorney for Frank C. Bettencourt, Jr. over Susan Boyd, executrix of the Estate of Frank C. Bettencourt, Sr.

Also submitted with the application was a copy of a July 3, 2008 correspondence from Mr. Bettencourt to the Fremont Board of Selectmen relative to the date of voluntary discontinuance of the non-conforming use of the property; a July 10, 2008 correspondence from the Building Official/Code Enforcement Officer Thom Roy, the July 17, 2008 Selectmen's meeting minutes as they pertain to this case and a copy of a July 24, 2008 correspondence to Mr. Bettencourt from Town Administrator Heidi Carlson representing the Selectmen.
(see file)

Comment sheets were received from the following, with comments in italics:
Planning Board: *Relief from ZBA does not extend to relief from Site Plan Review.*

Conservation Commission: *For the following reasons the Conservation Commission recommends against an extension of the commercial non-conformance use of the Exeter River Camping Area.*

- 1. The Exeter River Camping Area is located in a Flood Plain.*
- 2. It is not in the spirit of the Shoreland Protection Act nor the Fremont Aquifer Protection District.*
- 3. This property has not been operated as a viable commercial entity in recent years and now that it has officially expired we do not believe it in the Town's best interest to grant an extension.*

Attached to the Conservation Commissions comment was a page from the State of NH Corporate Division listing the status of the Exeter River Camping Area as "forfeited" with a dissolve date of December 22, 1990.

The Board also received copies of the August 18, 2008 Conservation Commission minutes and August 20, 2008 Planning Board minutes as they pertain to this case.

Mr. Bettencourt requested that his letter of intent be read aloud so those present have a better understanding of the request for this Use Variance and the extenuating circumstances of the property. Mrs. Bolduc did this. (see this letter in the file) Mr. Bettencourt stated that the reason for the Use Variance request is so they can sell the property as a campground for which it has been used for some thirty years. It was noted that it has been determined by the Selectmen that the property ceased to operate as a seasonal campground as of November 1, 2006 when it closed for the 2006 season. Article III Section D-2 of the Fremont Zoning Regulations allows 18 months before a business is considered abandoned as long as the owners have been trying to convey it, which he was, so this business is considered abandoned as of May 1, 2008.

The Board reviewed a copy of a plan submitted which showed the entire 6.19 acre parcel with the locations of all abutting properties. There were two attachments. One was a sketch that showed the location of the existing house, septic, leach field dated October 6, 1969. The other attachment was a hand-drawn sketch showing 50 numbered sites. The 1969 NH DES Compliance Certificate issued to Mr. Bettencourt for the Exeter River Camping Area approves 20 campsites. Mr. Bettencourt stated that when his parents purchased the property in 1981 there were 50 sites. There was a discussion relative to the scope of the business and the timing of abandonment.

Mr. Andrew asked if the abutters had any comments. There were questions and a discussion relative to how many sites the applicant was proposing. Mr. Brown said that, as a direct abutter, he has some concerns about the number and locations of campsites. He explained that he has dogs and would not want barking to become an issue.

A site visit was discussed. At 8:16 pm Mrs. Bolduc made the motion to continue this Public Hearing to 9:00 a.m. on September 6, 2008 at 13 Clough Crossing for the purpose of a site visit, and to the Fremont Town Hall at 7:30 p.m. on September 30, 2008.

Motion seconded by Mr. Downing with unanimous favorable vote.

Case # 08-005
Philip B. Fogarty
MAP 7 LOT 098

Present: Applicant/owner Philip B. Fogarty, Kevin Fogarty, representing Attorney Scott LaPointe, Surveyor Peter Landry, Appraiser Paul Brown, James Quinlan, abutters Wendy German, Robert O'Shea, Jim Carney and Bob Johnstone.

Mr. Andrew opened this Public Hearing at 8:20 p.m. and read the Public Notice of the Hearing as follows:

In accordance with NH RSA 675:7, you are hereby notified that the Fremont Zoning Board of Adjustment will hold a Public Hearing at 8:00 pm on Tuesday August 26, 2008 at the Fremont Town Hall, downstairs Land Use meeting room, for Philip Fogarty, Trustee for Nominee Trust, for 16 Beach Street, Map 7 Lot 098, Fremont, NH.

The applicant is seeking an Area Variance from the terms of Article IV Section 1 of the Town of Fremont Zoning Ordinance to allow the construction of a twenty four (24) foot x forty four (44) foot residential structure closer than twenty (20) feet from each of two (2) sideline setbacks.

You are invited to appear in person or by counsel and state reasons why the appeal should or should not be granted. Written comments will be accepted up until the date of the hearing.

Mr. Andrew explained that due to an omission in the abutters list, abutter Robert D. O'Shea of 10 Beach Street (Map 7 Lot 097) was not notified of this hearing as required in the provision of NH RSA 676:7, 1(a). Mr. O'Shea has, however has agreed to forgo his notification rights and has signed the following waiver, dated August 26, 2008, which Mr. Andrew read into these minutes:

Zoning Board of Adjustment Notification Waiver

By my signature below, I Robert D. O'Shea, Jr., certify that as the owner of property at 10 Beach Street, Fremont Tax Map 7 Lot 097 and an abutter to the property at 16 Beach Street, Fremont Tax Map 7 Lot 098, I did not receive notice via certified mail of a public hearing to be held by the Fremont Zoning Board of Adjustment at 8:00 pm on Tuesday August 26, 2008 at the Fremont Town Hall, downstairs Land Use meeting room, for Philip Fogarty, Trustee for Nominee Trust, for 16 Beach Street, Map 7 Lot 098, Fremont, New Hampshire who is seeking an Area Variance from the terms of Article IV Section 1 of the Town of Fremont Zoning Ordinance to allow the construction of a twenty four (24) foot x forty four (44) foot residential structure closer than twenty (20) feet from each of two (2) sideline setbacks.

I also certify that on August 25, 2008, upon visiting the Fremont Land Use Office, I did received the written notification of the public hearing and that I hereby waive any objection of a late or improper notification that is required by the provision of NH RSA 676:7,1(a).

Mr. Andrew stated that there is not a full five Member Board present and related to Mr. Fogarty that he has the option of waiting for the presence of a full Board for any decision. Mr. LaPointe immediately said they would like to wait for a full five Member Board, but after consulting with Mr. Fogarty he said that they would like to move forward with the four members present for tonight's meeting.

Mr. Andrew explained the purpose of the Board and the procedure for an Area Variance including the five conditions which must be met in order for a Variance to be granted. He then read Article IV Section 1 of the Fremont Zoning Regulations.

It was noted that this hearing was noticed on August 11, 2008 at the Fremont Post Office and Fremont Town Hall and in the August 15, 2008 edition of the Rockingham News. The applicant and abutters were notified via certified mail on August 15, 2008. The applicant was re-noticed on August 19, 2008 due to an address error. All returns have been received except for that of the applicant. The application package included the proper check amount, a current list of abutters, letter of intent, a July 23, 2008 Code Enforcement letter of denial. Also submitted with the application was the building permit application.

Atty. LaPointe stated that the deed to Map 7 Lot 098 includes four (4) separate parcels which have been identified on the Tax Map under one (1) lot number. He added that the owners are planning to

do a voluntary lot merger to combine the other three (3) lots. The result would be the four (4) lots would then be two (2) lots; the lot that is the subject of this Variance request and one (1) additional lot. Mr. LaPointe offered that Mr. Fogarty would not object to the intended voluntary lot merger as a condition of approval for the Variance.

Comment sheets were received from the following, with comments in italics:

Conservation Commission: *no comment*

Planning Board: *no comment*

Fire Chief: *Only concern would be how close to neighboring structures.*

The Board reviewed submitted plans of the property that were drawn by Surveyor Peter Landry which showed the entire .14 acre (50' x 120') parcel with the locations of all abutting properties. It also showed the locations of the proposed well, proposed septic area, and the proposed 24' x 44' dwelling which would be as close as 13' to the northerly sideline abutting Map 7 Lot 097 and 13' to the southerly sideline abutting another parcel within Map 7 Lot 098. The plan also showed the existing well, well radius, dwelling, septic system and garage on the other parcels of Map 7 Lot 098. Mr. Landry showed a separate, but similar plan that showed where other existing structures in the area have a less than 20' property line setback.

Atty. LaPointe said that the lot has existed since 1957 with the four separate parcels on the deed. He submitted a document listing applicable criteria in support of the five conditions for the variance request and he based his comments on this list as follows: 1) Mr. Fogarty proposes a new residence built to all present building and safety codes. This is in distinct contrast to some of the residences in the immediate neighborhood which were in whole or in part during a period of more relaxed regulations and municipal oversight. Therefore, the proposed structure, itself, would not tend to diminish surrounding property value. The specific request of relaxing each sideline setback by 7' would not diminish surrounding property values. Many structures within the neighborhood of "Dustons Shores" do not meet setback regulations and is building within the stated setbacks in this case would not distort that prior pattern of natural development. 2) The granting of the variance will not be contrary to public interest because the neighborhood is densely developed. Mr. Fogarty wishes to build a single family residence on a lot of record (lot 92) and is filing a merger of the remaining lots (93, 94 and 95) into one single lot – application to be made to the Fremont Planning Board – thus going from four separate and distinct lots of record to two lots of record. The public interest encouraged is reasonable use of lands and it certainly would not be contrary to the public interest that Mr. Fogarty be allowed to make the highest and best use of his lot. The neighborhood in which the lot is situated is densely developed and a relief from the strict requirement of the sideline setbacks would not be contrary to the public interest in this instance. 3) Denial of the variance would constitute an unnecessary hardship to the owner because special conditions of the property make it necessary for the reduction in the sideline setbacks in order to allow Mr. Fogarty to construct the home as designed. Mr. Fogarty has caused the home to be constructed so as to meet as many codes and ordinances as possible. To reduce the home's utility to meet the sideline setbacks would impose an undue financial burden on Mr. Fogarty as the marketability of the home would be called into question. Special conditions include the presently undersized lot, a neighborhood of dense development and numerous instances of sideline setback encroachments, creating a pattern of development. 4) Granting the variance would be substantial justice because to prevent Mr. Fogarty from making reasonable economic use of the presently residential lot for that purpose is a harm to Mr. Fogarty that would far outweigh any benefit or gain to the general public if the variance is denied and the sideline setbacks strictly enforced in this case. 5) Allowing the variance would not be contrary to the spirit and intent of the ordinance because the allowance would not create any safety issue or hazard. The proposed home will meet front and rear setbacks and it will be forty feet from the nearest abutter.

Mr. LaPointe submitted an August 26, 2008 written favorable opinion from Realtor Julia Myrick of Weare, NH relative to the quality of the “owners work” and stating that a new structure at 16 Beach Street would “help add value to the area”. Real Estate Appraiser Paul Brown stated that he does not believe that there will be any value diminution as a result of this project and he has issued a written statement to this effect.

Ms. German explained that the Riverside drive area, which includes Beach Street, was originally subdivided for seasonal camps along the Exeter River. She added that most of the lots are very small and the houses are close together and she did not think it would be good to put more houses in the area or on the street.

Mr. O’Shea stated that he does not want Beach Street to fit in with Riverside Drive relative to density of houses. He asked why they did not put the house in another spot, noting that the neighborhood is congested already and he would rather not have another house go up so close to his property. Mr. O’Shea voiced concern relative to the addition of another septic system in the area and Mr. LaPointe stated that they would put in a modern small septic that would fit in with area.

At 9:35 Mr. Baker made the motion to continue this Public Hearing to the site at 10:00 am on September 6, 2008 and to the Town Hall at 8:00 pm on September 30, 2008.
Motion seconded by Mr. Downing with unanimous favorable vote.

ORDINANCES

There was a general discussion relative to Article IV Section 1 as it pertains to setbacks.

CORRESPONDENCE

1. Notice of the November 12 – 14 annual Local Government Center conference. Program details and registration will be available soon.

Next meeting: scheduled for August 26, 2008.

At 9:46 pm Mr. Downing made the motion to adjourn.
Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
